

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

CRL.A.No. 201 of 2002()

CC.197/1998 of JUDL. MAGISTRATE OF FIRST CLASS-IV (MOBILE), TVM

APPELLANT:

M/S.M.G.F.LTD., M.G.F.HOUSE,17-B,
ASAF ALI ROAD, NEW DELHI, ITS BRANCH OFFICE AT
VALLAKADAVU, THIRUVANANTHAPURAM, REP.BY ITS
GENERAL MANAGER/PRINCIPAL OFFICER, UMESH SANAN

BY ADV. SRI.G.HARIHARAN

RESPONDENTS:

1. B.S.ANILKUAMAR, S/O. SUKUMARAN UNNITHAN,
BINITHA NIVAS, MADAVOOR P.O.,KILIMANOOR.
2. STATE OF KERALA, REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.THOMAS ABRAHAM
SRI.K.B.ARUNKUMAR
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No. 201/2002

Dated this 17th day of September, 2007

JUDGMENT

The appellant is the complainant who had initiated proceedings under Section 138 of the Negotiable Instruments Act for the alleged dishonour of the impugned cheque for a sum of Rs.2,00,000/-. According to the complainant, the amount is due towards the outstanding hire purchase instalments.

2. The evidence adduced in the matter consisted of the testimony of PW1, Exts.P1 to P10. The defence witnesses were examined as DW1 and 2 of whom DW2 is the accused and got marked D1 and D2. The trial Court acquitted the accused on the ground that PW1 is not empowered to prosecute the proceedings and that the complainant has failed to establish the execution of the cheque. It is also found that the complainant had repossessed the vehicle and also obtained an arbitration award prior to the date of Ext.P3 cheque. The trial Court has pointed out that the complaint is totally silent about the arbitration award and of course, also as to the re-possession of the vehicle. It is further found that the

evidence of PW1 is not at all helpful to support the prosecution. In the circumstances, PW1, being an employee of the company is competent to prosecute the matter.

3. All the same, as observed by the Court below and from the evidence of PW1, I find that his evidence is one of the total ignorance as to the details of the transaction. The point advanced right now is that Ext.P3 cheque was issued towards the discharge of the amount due as per the arbitration award. There is no such case in the complaint or in the evidence. In the circumstances, I find no reason to interfere in the findings of the Courts below.

The appeal is accordingly dismissed.

K.R.UDAYABHANU
JUDGE

mrCS